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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

APR - 8 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM No. <u>93-41</u>
)	
TRIAD FAMILY NETWORK, INC.)	BPED-910227MD
Winston-Salem, North Carolina)	
Channel 207C3)	
)	
POSITIVE ALTERNATIVE RADIO, INC.)	BPED-911119MC
Asheboro, North Carolina)	
Channel 207A)	
)	
For Construction Permit for a)	
New Noncommercial Educational)	
FM Station)	

TO: Hon. Joseph P. Gonzalez
Administrative Law Judge

PETITION TO ENLARGE ISSUES

Positive Alternative Radio, Inc. ("Radio"), through its counsel and pursuant to §1.229(b)(1) of the rules, hereby respectfully requests that the issues in this proceeding be enlarged¹ by the addition of the following issues:

- (1) To determine whether Triad Family Network, Inc. is, and was at the time it filed its application, financially qualified to construct the proposed facility;
- (2) To determine whether Triad Family Network Inc. falsely certified that it was financially qualified at the time it filed its application; and
- (3) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether

¹ The Hearing Designation Order was released March 9, 1993. Thus, this Petition is timely, pursuant to Section 1.229(b)(1) of the Rules.

Triad Family Network is basically qualified to be a licensee of the Commission.

As good cause therefor, Radio states as follows:

1. Initially, it must be observed that Radio has been placed by Triad Family Network, Inc. ("Triad") at a significant disadvantage in this proceeding, with regard to a review of the financial qualifications of the applicant and otherwise, in that Triad has unilaterally determined that it need not exchange any of the documents required by §1.325 of the rules (Standard Document

of construction funds. Communications Act of 1934, as amended, 47
U.S.C. §§308(b), 319(c). Georgia Public Telecommunications

This is not to be interpreted as a loan commitment, but as a willingness to discuss future loan opportunities, should the need arise.

This "willingness to discuss" goes no further, and is no better than a statement, found to be inadequate, that the lender is "seriously interested in exploring", Global Information Technologies, 5 FCC Rcd 3385 (Rev. Bd. 1990) or that the bank "has an interest" in financing a proposed facility, Rebecca L. Boedker, 5 FCC Rcd 2855 (Rev. Bd. 1990). Even assuming that Watson's prior dealings with Southern National Bank qualify as "a long and established relationship with the borrower sufficient to infer that the lender is thoroughly familiar with the borrower's assets, credit history, current business plans, and similar data." Multi-State Communications, Inc. v. FCC, 590 F. 2d 1117 (D.C. Cir. 1978), there is no information as to the amount of the proposed loan, its terms and conditions, payment period, interest rate, collateral requirements, and other basic terms. Where such fundamentals have been absent in recent cases, the Board has found no "reasonable assurance" of availability of funding. See Rebecca L. Boedker, *supra*; Marlin Broadcasting of Central Florida, Inc., 4 FCC Rcd 7945, 7946 (Rev. Bd. 1989); Scioto Broadcasters, 5 FCC Rcd 5158, 5160 (1990). The oft-quoted language of Scioto is relevant here:

When in order for the Board to determine that an

bank with such data, and the bank is sufficiently satisfied with this financial information (i.e., collateral guarantees, see Chapman Radio and Television Co. 70 FCC 2d 2063 2072 (1979)) that ceteris paribus.

in serious and reasonable efforts to ascertain predictable construction and operation costs." Northampton Media Associates, 4 FCC 5517, 5518-5519 (1989); Heidi Damsky, 7 FCC Rcd 5244 (ALJ 1992). Triad has produced no information as to its proposed costs and how they were derived, nor any evidence that its bank had received any such information. Of particular import is the fact that Triad was proposing a non-commercial station. The Southern National bank letter does not indicate that this information had been imparted to or discussed with the bank.

7. In fact, the contrary is indicated by the tone of the banker's letter: ". . .an FM station. . ." ". . .both AM and FM facilities. . .". It is impossible to determine whether the banker would have written even the insufficient accommodation letter if he had known that Triad was proposing a non-commercial station unlike the for-profit facility for which the bank had previously provided funds.

8. The bank letter of Triad fails to meet even the most basic qualifications to provide "reasonable assurance" of financial ability to construct the Triad station. By no means could the Commission determine that Triad is financially qualified to construct its proposed station. A financial issue must be added to address the facial inadequacy of Triad's source of funding.

9. In addition, the spectre of doubt arises as to whether Philip Watson, in seeking the bank letter submitted with Triad's application, misrepresented facts to Southern National Bank of North Carolina, such as whether he revealed that he was proposing

to build a non-commercial, educational FM station rather than a commercial FM as an adjunct to his for-profit AM facility in Winston-Salem. If Watson misrepresented facts to the bank in an effort to receive the accommodation letter he has filed (a letter he had reason to believe would not have been issued if Watson's true purpose had been revealed) and then submitted the bank's letter to the Commission, he was compounding a misrepresentation, and presenting financial support obtained by fraud, misrepresentation, or lack of candor.

10. Ample intent to deceive existed, for without it, he well might have been denied any support from Southern National Bank. The Presiding Judge should add a misrepresentation issue, in addition to the requested financial and financial certification issues requested, in order to bring to light the facts underlying Triad's bank letter.

Therefore, the foregoing considered, Radio respectfully requests that the issues listed above, and any further issues that the Presiding Judge deems appropriate, be added for resolution with respect to the Triad applicant.³

³ If the issues specified herein are added, Radio requests, pursuant to Section 1.229(e) of the Rules, that the following documents be produced, and that Radio be permitted to depose the principals of Triad with respect to the financial qualifications of the applicant.

1. Any and all documents, including correspondence between any Triad principal, agent or representative, and Southern National Bank, or any other bank or lending institution or source, concerning the financial proposal of Triad Family Network, Inc. for construction of the proposed Winston-Salem FM station.

Respectfully submitted,

POSITIVE ALTERNATIVE RADIO, INC.

By 
Julian P. Freret
Its Counsel

BOOTH, FRERET & IMLAY
1233 20th Street, N. W.
Suite 204
Washington, D. C. 20036
(202) 296-9100

April 8, 1993

2. A current balance sheet of Philip T. Watson, showing all sources of available funding for the Triad facility, all financial obligations of Watson to other entities, including amounts payable and dates those obligations become due, and net assets of Watson.

3. Any documents in the possession of Triad, or its principals, agents, or representatives, which relate to calculations of cost estimates for construction of the proposed Triad station, and any correspondence concerning such calculations between, among, or involving any Triad principal.

4. Any documents which show, or tend to show, who was responsible for obtaining assurance of financing for the proposed Triad FM station.

5. Any organizational documents of Triad which relate to the proposed funding for construction or operational expenses for the FM station.

Southern National



February 4, 1991

Ms. Donna B. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D. C. 20554

RE: Philip T. Watson

Dear Ms. Searcy:

Mr. Philip Watson has asked me to write this letter to you in connection with Triad Family Network, Inc.'s application for an FM station.

Southern National Bank provided the construction loan funds for Mr. Watson to build a new radio station and office building for his accounting practice on Trade Street in Winston-Salem. The first floor of the new building was built for the radio station and is intended to house both AM and FM facilities. (Mr. Watson has planned for this addition for quite awhile).

As with any customer in Mr. Watson's good standing, Southern National Bank will entertain any additional financing requests, if necessary, to facilitate this expansion. This is not to be interpreted as a loan commitment, but as a willingness to discuss future loan opportunities should the need arise. Mr. Watson has paid all loans as agreed in the past and has handled all deposit accounts - personal and business - in an excellent manner.

My examination of the radio station's financial statement at the time of the construction loan revealed no problems. It appears to me that Mr. Watson has made appropriate plans to secure any additional funds needed from outside sources, other than the bank.

Should you need any further information concerning Mr. Watson, please do not hesitate to contact me.

Sincerely,

Mark E. Nichols
Vice President

MEN:mm

CERTIFICATE OF SERVICE

I, Margaret A. Ford, Office Manager of the law firm of Booth, Freret & Imlay, do hereby certify that copies of the foregoing PETITION TO ENLARGE ISSUES were mailed this 8th day of April, 1993, to the offices of the following:

*Administrative Law Judge
Joseph P. Gonzalez
Federal Communications Commission
2000 L Street, N. W., Room 221
Washington, D. C. 20554

*Norman Goldstein, Esquire
Hearing Branch, Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N. W., Room 7212
Washington, D. C. 20554

*Chief, Data Management Staff
Audio Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N. W., Room 350
Washington, D. C. 20554

B. Jay Baraff, Esquire
Baraff, Koerner, Olender
& Hochberg, P.C.
5335 Wisconsin Avenue, N. W.
Suite 300
Washington, D. C. 20015-2003


Margaret A. Ford

* Via Hand Delivery